

## **REMARKS**

Entry of the foregoing amendments is respectfully requested.

### **Summary of Amendments**

Claims 13-23, 26-40 and 44-56 submitted herewith differ from the claims submitted with the Amendment filed April 3, 2007 in that the status identifier of claim 27 has been changed to “withdrawn” (as requested at page 2 of the present Office Action under the heading “Claim Objections”).

### **Summary of Office Action**

Claims 13-17, 26, 30-40, 44-49, 54 and 55 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Touzan et al., U.S. Patent No. 6,210,656 B1 (hereafter “TOUZAN”) in view of Giacomoni, U.S. Patent No. 7,083,799 B1 (hereafter “GIACOMONI”) and Dixon et al., U.S. Patent No. 5,869,070 (hereafter “DIXON”).

Claims 28 and 29 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN, GIACOMONI and DIXON and further in view of Schoenrock et al., U.S. Patent No. 5,876,737 (hereafter “SCHOENROCK”).

Claims 13-17, 26, 30, 36-40, 52-54 and 56 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over TOUZAN in view of GIACOMONI and DIXON”).

Claims 13-17, 26, 30-40 and 44-49 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-5, 7-21, 26-29, 31-34 and 40-44 of co-pending Application No. 10/830,001.

**Response to Office Action**

Withdrawal of the objections and rejections of record is respectfully requested, in view of the foregoing amendments and the following remarks.

***Response to Rejection of Claims under 35 U.S.C. § 103(a)***

The Examiner appears to maintain the position set forth in the previous Office Action, i.e., that in view of the teachings of GIACOMONI and DIXON one of ordinary skill in the art would have been motivated to increase the surfactant concentration in the self-foaming cleansing cream formulations of Examples 1 and 3 of TOUZAN from 1.5 % to at least 5 % by weight, thereby arriving at compositions which are encompassed by present claim 13. In particular, the Examiner appears to be of the opinion that in view of the fact that GIACOMONI discloses that NO-synthase inhibitors can be used to reduce the skin irritant effect of topically applied cosmetic and pharmaceutical substances and DIXON discloses surfactant concentrations above 5 % by weight in compositions which allegedly are similar to those of TOUZAN, one of ordinary skill in the art would have been motivated to add the NO-synthase inhibitors of GIACOMONI to the emulsions of TOUZAN in order to be able to increase the surfactant concentration thereof to the levels used in the compositions of DIXON.

Applicants still disagree with the Examiner in this regard for various reasons. In particular, the Examiner has failed to point to a single passage of TOUZAN which could be taken as an indication that the emulsions of TOUZAN would benefit from increasing the surfactant concentration thereof beyond the maximum of 2 % by weight set forth by TOUZAN. In this regard, it is pointed out that quite to the contrary, TOUZAN conveys

the impression that even emulsions which contain considerably less than 2 % by weight of surfactant - or even no surfactant at all - are completely satisfactory. Specifically, the passages of TOUZAN which relate to the presence of a surfactant in the emulsions described therein state the following (emphases added):

Accordingly, one object of the present invention is to provide a hair and skin treating composition which is more tolerant than those of the prior art, in the form of pressurizable, self-foaming creams comprising less than 2% of in surfactants, preferably no surfactants at all. Col. 2, lines 28-31.

The compositions of the invention may also comprise one or several surfactants in an amount less than 2% by weight, preferably in an amount less than 1.5% by weight. In this case, the surfactant may be selected from any known class of surfactants. Suitable surfactants are, in fact, disclosed in "Encyclopedia of Chemical Technology, Kirk-Othmer", Vol. 22, pp. 333-432, 3rd edition, 1979, Wiley, which surfactants are the main classes of surfactants known to those skilled in the art, along with their functions (in particular whether or not they form a foam). Advantageously, when a surfactant is introduced into the compositions of the invention, a foaming surfactant is selected. Although a very satisfactory mousse is obtained in the absence of surfactant, the presence of a foaming surfactant may promote the formation of a more aerated and voluminous mousse.

The foaming surfactants of the present invention are selected from surfactants having a foaming power characterized by a foam height of more than 100 mm, preferably of more than 120 mm, measured according to the Ross-Miles method for a 0.1% by weight solution of surfactant in distilled water at 25° C. They may be present in a proportion of 0-2% by weight, preferably 0.5-1.5% by weight, relative to the final composition. Col. 4, line 57, to col. 5, line 12.

The present composition comprises little or no surfactant and is particularly suitable to care for and/or treat and/or cleanse sensitive skins. Col. 7, lines 3-5.

Examples 1 and 3 of TOUZAN describe self-foaming cleansing creams which comprise 1 and 1.5 % by weight, respectively of surfactant (sodium laureth sulfate). The self-foaming cleansing cream of Example 2 appears to contain no surfactant at all. Nevertheless, all three compositions are described as transforming into a (fine, dense, smooth) mousse upon contact with (upon massaging it on) the skin.

Applicants note that in the paragraph bridging pages 8 and 9 of the present Office Action the Examiner states:

“The fact that a stable mousse is obtained in the absence of a surfactant does not necessarily negate the motivation to produce a composition [with] a higher foaming action. The prior art teaches a range of weight amount of other constituents of the emulsion, such as using up to 50 % of oil. Varying the amount of other agents that may affect the foaming property would have obviously required adjusting the amount of lathering surfactants as well.”

In this regard, it is pointed out that TOUZAN states in col. 5, lines 47-61 (emphasis added):

The fatty phase represents at least 5% of the total weight of the final composition and may [represent] up to 50% by weight of the total weight of the composition without the foaming power of these compositions being endangered. The fatty phase preferably represents from 5-40%, and more preferably from 10-30% of the total weight of the composition.

The fatty phase may consist solely of cosmetic oil, the weight proportion of which relative to the total weight of the composition may reach 50%; it may also comprise animal, plant or synthetic waxes, preferably in amounts less than 1%.

Preferably, the compositions of the invention comprise from 5-40% by weight, relative to the total weight of the composition, of at least one cosmetic oil, and even more preferably from 10-30%. ...

Accordingly, TOUZAN makes it entirely clear that even in the presence of a large amount (i.e., up to 50 % by weight) of oil (which according to the paragraph bridging columns 1 and 2 of TOUZAN is known to “kill” the foam), the emulsions described therein (containing not more than 2 % by weight of surfactant) retain their self-foaming properties.

In view of the foregoing, it is not seen why one of ordinary skill in the art would be motivated to disregard the express teaching of TOUZAN and employ much more

surfactant (i.e., at least 250 % of the maximum set forth by TOUZAN) to make self-foaming emulsions.

Regarding GIACOMONI, it is noted that even if one of ordinary skill in the art were to recognize that by employing the NO-synthase inhibitors described therein it would be possible to incorporate more than 2 % by weight of surfactant into the self-foaming emulsions of TOUZAN, the question still would arise why a higher surfactant concentration (and in particular, a surfactant concentration which is at least 2.5 times the maximum surfactant concentration disclosed by TOUZAN) in the emulsions of TOUZAN would be desirable. As set forth above, TOUZAN discloses that even in the absence of any surfactant, satisfactory self-foaming emulsions can be obtained.

Moreover, the specific examples of NO-synthase inhibitors mentioned in col. 3, lines 45-50 appear to be relatively sophisticated (and as such expensive) products whose incorporation into a cosmetic composition would only be justifiable if the benefit expected therefrom can be expected to outweigh the increased cost of the cosmetic product.

It further is noted that GIACOMONI makes it clear that the effectiveness of the NO-synthase inhibitors described therein is not without limits. For example, according to col.3, lines 60-63 of GIACOMONI, even in the presence of the NO-synthase inhibitors, retinoids can be employed in a concentration of only up to 5 % by weight without any inconvenience for the user. It is thus not even clear that a cosmetic composition comprising one or more NO-synthase inhibitors and at least 5 % by weight of surfactant would not have any irritating effect on skin.

Further, regarding the alleged motivation to combine the teachings of TOUZAN and DIXON, one of ordinary skill in the art will immediately recognize that the corresponding compositions have hardly anything in common. This becomes particularly clear when comparing the surfactant concentrations disclosed (and recommended) by these documents. Specifically, as set forth above, TOUZAN limits the total surfactant concentration to a maximum of 2 % by weight and illustrates that even in the absence of any surfactant at all a satisfactory self-foaming emulsion can be obtained (see Example 2).

DIXON on the other hand, makes it clear that the surfactant concentration in the compositions disclosed therein must be at least 5 % and may be up to 30 % by weight (see, e.g. abstract of DIXON). More specifically, DIXON states in col. 12, lines 38-42 (emphasis added):

The combined personal cleansing and moisturizing liquid composition herein comprises at least from about 5 part to about 30 parts, preferably from about 5 parts to about 25 parts, and most preferably from about 10 parts to about 25 parts of a lathering synthetic surfactant.

Claim 1 of DIXON calls for a surfactant concentration of from 12 to 20 %. In the Examples of DIXON the total surfactant concentrations range from 10 % in Examples V and X to 15 % by weight in Examples 1 and 2. In view of these facts it would appear that one of ordinary skill in the art can safely assume that DIXON would not call for a surfactant concentration of at least 5 % by weight if it were possible to obtain satisfactory compositions below this minimum surfactant concentration. In contrast, TOUZAN shows that the compositions disclosed therein can be satisfactory even without any surfactant at all. Applicants fail to see how such a significant difference in properties would motivate

one of ordinary skill in the art to combine the teachings of TOUZAN and DIXON, and neither does the present Office Action provide any explanation in this regard.

Applicants submit that for at least all of the foregoing reasons and the additional reasons set forth in the response to the previous Office Action, even a combination of TOUZAN, DIXON and GIACOMONI (and SCHOENROCK, which does not cure any of the deficiencies of the former documents) is unable to render obvious the subject matter of any of the present claims, wherefore the rejection of these claims under 35 U.S.C. § 103(a) is without merit and should be withdrawn, which action is again respectfully requested.

***Response to Provisional Nonstatutory Double-Patenting Rejection***

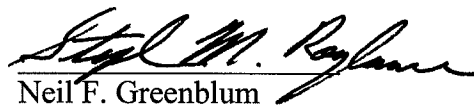
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Applicants again respectfully request that this rejection be held in abeyance until the Examiner has indicated allowable subject matter. Applicants will then decide whether or not it is necessary to file a terminal disclaimer in the present application.

### CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
Stephan RUPPERT et al.



Neil F. Greenblum  
Reg. No. 28,394

September 4, 2007  
GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191  
(703) 716-1191

Stephen M. Roylance  
Reg. No. 31,296